Filed 8/8/19 Assis v. The Cristcat Group, Inc. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHLOMI ASSIS, Plaintiff and Respondent, v. THE CRISTCAT GROUP, INC. et al., Defendants and Appellants.	B291526 (Los Angeles County Super. Ct. No. LC093343)

APPEAL from a judgment of the Superior Court of Los Angeles County. Huey P. Cotton, Jr., Judge. Affirmed.

The Horowitz Law Firm, Jeffrey D. Horowitz, and Lilit Mkrtchyan for Plaintiff and Respondent.

Matthew E. Hess for Defendants and Appellants.

* * * * * *

Five years after entering judgment against one defendant, the trial court amended its judgment to add three additional defendants whom it concluded operated as alter egos or sister companies of the original defendant. The newly added defendants appeal. We conclude the trial court did not abuse its discretion in amending the judgment, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The Azinian family business*

Since 1991, defendant Robert Azinian (Azinian) and his family have owned and operated several Johnny Rockets franchises. Johnny Rockets serves burgers, French fries and other classic American fare in a 1950's diner atmosphere.

Azinian owned and operated his franchises through a number of different corporations, including, as pertinent here, defendant The Cristcat Group, Inc. (the Group), defendant Cristcat Hollywood, Inc. (Cristcat Hollywood) and defendant Cristcat Calabasas, Inc. (Cristcat Calabasas). These three corporations have overlapping officers and corporate directors. For each corporation, Azinian (and during certain years, his wife) was an officer and a director as well as the agent for service of process. A combination of Azinian, his wife and their daughters are the shareholders of each corporation. The corporations all use the same accountant. Although Cristcat Hollywood and Cristcat Calabasas each operate a Johnny Rockets franchise at a different location, these two corporations and The Group all have the same corporate headquarters address. In 2017, all three corporations had one board of directors meeting, and all three meetings were held at the same place, at the same time, and with

only the same two people attending (namely, Azinian and his wife).

Although each of the three corporations maintained its own bank account, opened its own separate accounts with vendors, and produced its own financial records, Azinian would at times commingle the finances of these and other corporations. Azinian himself was unsure which of the corporations employed him, and would draw his salary from whichever corporation happened to be "profitable" at the moment. Azinian would also use money earned by one corporation to pay the debts of another, if the first corporation had money available.

The use of multiple, separate corporations was the brainchild of Azinian's accountant. Azinian himself had no knowledge of how the corporations were structured, what formal role he played in each, or which one(s) paid his salary.

B. *The investment agreement*

In July 2008, Azinian entered into an oral agreement with plaintiff Shlomi Assis (plaintiff). Under that agreement, plaintiff agreed to invest $100,000 with Azinian to open a Johnny Rockets franchise in the Philippines. Azinian also agreed to refund the money if the franchise did not open. Azinian was unable to open a franchise in the Philippines, but he never refunded plaintiff's investment.

C. *Initial litigation and settlement*

Plaintiff sued Azinian and The Group for breach of the oral contract.

In August 2010, the lawsuit settled. By this time, more than half of Azinian's Johnny Rockets restaurants had closed and their associated corporations struggled to meet their financial obligations, including owing millions of dollars to creditors. The

Group agreed to repay plaintiff his $100,000 in monthly payments of $2,500. In exchange, plaintiff agreed to dismiss the suit against The Group and Azinian, although Azinian waived the statute of limitations to enable plaintiff to sue him in the event The Group defaulted.

The Group made five payments. Two of the payments were drawn on an account belonging to Johnny Burbank, Inc., one of Azinian's other Johnny Rockets franchise corporations.

D. *Further litigation over breach of the settlement*

In 2011, plaintiff sued The Group for breach of the 2010 settlement agreement.

In May 2012, the trial court granted summary judgment to plaintiff on the sole claim for breach of contract and entered judgment in the amount of $116,636.84.

E. *Dissolution of The Group*

Six weeks after the trial court entered judgment, Azinian signed a certificate to dissolve The Group and thereafter filed it with the Secretary of State. He reincorporated The Group in 2014, but it had only $12 in its bank account.

II. Procedural Background

In 2017, plaintiff filed a motion asking the trial court to amend the judgment to add Azinian, Cristcat Hollywood and Cristcat Calabasas as defendants (and hence as judgment debtors).

In April 2018, the trial court granted plaintiff's motion and amended the judgment as requested. Citing many of the above recounted facts, the court found that The Group and the two other Cristcat corporations "had a unity of ownership and interest" because they were all "part of the same enterprise": They were "engaged in the exact same business," they sometimes

commingled funds, and they sometimes disregarded corporate formalities. Based on Azinian's substantial role as an officer, director and agent for service of process of each entity, the court further found that The Group was also an "alter ego" of Azinian's. Because Azinian also "actively controlled the [prior] litigation," the court determined that adding Azinian, Cristcat Hollywood and Cristcat Calabasas to the judgment was not "add[ing] . . . new defendant[s]," but rather "inserting the correct name of the real defendant."

Azinian, Cristcat Hollywood and Cristcat Calabasas (collectively, the Azinian defendants) filed this timely appeal.

DISCUSSION

The Azinian defendants argue that the trial court erred in amending the judgment to add them as defendants and judgment debtors.

I. The Governing Law

A trial court has the equitable discretion to amend a judgment to name new defendants (and hence new judgment debtors) if (1) "the parties to be added as judgment debtors had control over the underlying litigation and were virtually represented in that proceeding"; and (2) those parties are "the alter ego" of, or part of the same "single enterprise," as the original party. (*Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 815-816 (*Relentless*); *LSREF2 Clover Property 4, LLC v. Festival Retail Fund 1, LP* (2016) 3 Cal.App.5th 1067, 1081 (*LSREF2*); *Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1421; see generally, Code Civ. Proc., § 187.) The second, alter ego / single enterprise element is met if (1) there is "'"such unity of interest and ownership that the separate personalities of the corporation

[that was the original judgment debtor] and the individual [or sister corporations to be added as judgment debtors] no longer exist"'" because the individual or sister corporations "'integrate their resources and operations to achieve a common business purpose"' and (2) "'"an inequitable result will follow"'" if the new judgment debtors are not added. (*LSREF2*, at p. 1081; *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1107-1108 (*Toho-Towa*); *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 509, 511-512 (*Greenspan*).) Although the doctrine of alter ego is to be "'sparingly used"' (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 281), that mandate is tempered when the question is whether to amend a judgment to add new judgment debtors: In this context, "great liberality is encouraged" because such amendment is not "add[ing] a new defendant but instead insert[ing] the correct name of the real defendant." (*Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1072-1073.)

In assessing whether there is a unity of ownership and interest (the first element of the alter ego / single-enterprise test), courts look to the totality of the circumstances. (*Greenspan*, *supra*, 191 Cal.App.4th at pp. 511-512.) Relevant circumstances include, but are not limited to, (1) whether there has been a commingling of funds, (2) whether an individual shareholder has treated corporate assets as his own, (3) whether the corporation has failed to obtain authority to issue, or to subscribe to issue, stock, (4) whether an individual shareholder has represented that he is personally liable for corporate debts, (5) whether multiple corporations have common ownership or common leadership, (6) whether the corporations or individual use the same business

location, same employees or same attorney, (7) whether the corporation was insufficiently capitalized, (8) whether the corporation was used as """"a mere shell,""""" (9) whether the identity of the true owners or financial interest of the corporation has been concealed, (10) whether the corporation disregarded """"legal formalities""""" or failed to maintain """"arm's length relationships among related entities,""""" (11) whether the corporate entity was used to procure labor, service or merchandise for another person or entity, (12) whether assets of the corporation were diverted """"to the detriment of creditors,""""" (13) whether the corporation was used """"as a shield against personal liability,""""" and (14) whether the corporation was used to transfer liability. (*Id.* at pp. 512-513; *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838-840.) No one factor is dispositive. (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811-812.)

In assessing whether an inequitable result will follow (the second element of the alter ego / single-enterprise test), what matters is that the *result* is inequitable, not that the debtor acted with any fraudulent or other nefarious intent. (*Relentless*, *supra*, 222 Cal.App.4th at p. 816.)

We review a trial court's decision amending a judgment to add additional judgment debtors for an abuse of discretion (*id.* at p. 815), but review subsidiary factual findings—including whether the newly added debtors are the alter ego or part of the same single enterprise as the original judgment debtor—for substantial evidence (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1248). In reviewing factual findings for substantial evidence, we ask only whether there is "'evidence that a rational trier of fact could find

to be reasonable, credible, and of solid value . . . to support the finding'" and do so while "view[ing] the evidence in the light most favorable to the finding." (*San Diegans for Open Government v. City of San Diego* (2016) 245 Cal.App.4th 736, 740).

II. Analysis

Because the Azinian defendants do not on appeal separately challenge the trial court's finding that they "had control over the underlying litigation" and thus "were virtually represented in th[e prior] proceeding," whether the trial court in this case abused its discretion in adding those parties as judgment debtors turns on whether substantial evidence supports the court's findings that Cristcat Hollywood and Cristcat Calabasas were part of the same "single enterprise" as the Group and that all of those entities were alter egos of Azinian himself.

A. *Unity of ownership and interest*

Substantial evidence supports the finding that Cristcat Hollywood, Cristcat Calabasas and The Group had "integrate[d] their resources and operations to achieve a common . . . purpose" and did not have a distinct "personalit[y]" from Azinian. (*Toho-Towa*, *supra*, 217 Cal.App.4th at p. 1108; *LSREF2*, *supra*, 3 Cal.App.5th at p. 1081.) The totality of the pertinent circumstances support this finding: Cristcat Hollywood, Cristcat Calabasas and The Group were in the same business of running Johnny Rockets franchises; all three corporations had the same overlapping owners and directors; Azinian treated the corporations as fungible and interchangeable when it came to drawing his salary, to employment (as he was unsure which corporation employed three different employees), and to paying the debts of one with the assets of another; and the corporations

disregarded corporate formalities, as the sole evidence of corporate board meetings for the three corporations showed them meeting at the same time, at the same place, with the same two people (Azinian and his wife). What is more, Azinian professed ignorance over the separateness of the corporations and repeatedly demonstrated his willingness to treat them as a single, unified conglomerate. Because Azinian controlled that conglomerate and directed its acts, the personalities of the corporations and Azinian himself were not distinct.

The Azinian defendants resist this conclusion with what boil down to two arguments.

First, they register disagreement with how the trial court weighed several of the circumstances cited above. These arguments lack merit for two reasons.

As an initial matter, this type of objection provides no basis for reversal. That is because our review is limited to assessing whether substantial evidence supports the court's finding, and that assessment does not permit us to reweigh factors. (E.g., *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1066.)

Further, the Azinian defendants' specific complaints lack persuasive force. They argue that the commingling of assets in this case is minimal and irrelevant because there were only two proven instances of commingling—namely, when Johnny Burbank, Inc. made two payments on the debt owed by The Group—and because Johnny Burbank, Inc. never filed an appeal in this case. This argument ignores the other evidence of commingling, including Azinian's testimony that he would draw his salary from whichever of multiple franchise corporations had money; it also ignores that the failure of Johnny Burbank, Inc. to

appeal is a non-sequitur because that entity was never added as a judgment debtor (and thus could not have appealed). They argue that common ownership is not sufficient by itself to show a unity of ownership and interest. This argument ignores the other badges of unity beyond common ownership. They argue that the restaurants owned by Cristcat Hollywood and Cristcat Calabasas were in different locations. This argument ignores the more telling evidence that the corporate address for these two entities *and* The Group were the same, and that the board meetings for all three corporations occurred at the same time, at the same place and with the same people. They argue that there is no evidence that their accountant ran all three entities. This argument ignores the undisputed evidence that the accountant set up this structure, that he was employed by all three corporations, and that Azinian appeared to pay little if any attention to the separate corporate entities when it came to drawing his salary or paying corporate debts. They argue that The Group was not insolvent at the time it accepted plaintiff's $100,000 investment. This argument ignores that the pertinent act is The Group's decision to settle and agree to repay plaintiff $100,000, which is an act undertaken when The Group had diminished assets.

Second, the Azinian defendants point to the absence of any evidence of many of the other circumstances that are typically indicative of unity of ownership and interest. What matters, however, is the proof and weight to be given to the circumstances that *are* present; those circumstances, as described above, constitute substantial evidence justifying the trial court's finding on unity.

B. *Inequitable result*

Substantial evidence also supports the trial court's finding that an "inequitable result" would follow if it declined to add Azinian, Cristcat Hollywood and Cristcat Calabasas as judgment debtors. A plaintiff's inability to "collect its judgment" because the original debtor "is insolvent" "is an inequitable result as a matter of law." (*Relentless*, *supra*, 222 Cal.App.4th at p. 813.)

The Azinian defendants make three arguments in response. First, they assert that *Relentless*'s language is limited to its facts and point us instead to language in *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 418, that "[d]ifficulty in enforcing a judgment does not alone satisfy this element." For this proposition, *Leek* cites *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523 (*Sonora*), but the passage from *Sonora* states that difficulty in enforcing a judgment fails to satisfy the *overall alter ego standard*, ostensibly because unity of ownership and interest is *also* required. (*Id.* at p. 539.) *Sonora* does not state that difficulty in enforcing a judgment fails to satisfy the inequitable result element of the alter ego standard, and we disagree with *Leek*'s suggestion to the contrary. Second, they assert that The Group had no nefarious intent, that Azinian was merely forgetful about the particulars of his business operations and that plaintiff was merely a party to a bad investment deal. This assertion ignores, as explained above, that an inequitable result does not require proof of a nefarious intent and also ignores that the pertinent act was not plaintiff's 2008 investment but The Group's 2010 decision to sign a settlement agreement obligating it to pay $100,000 at a time when its business was collapsing. Finally, they assert the trial court did not make any express findings on the existence of an inequitable result. This

assertion was forfeited because it was not raised until the reply brief on appeal (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764), and lacks merit because the inequitable result of non-collection is implicit in plaintiff's motion to amend *and* because we must infer all findings to support the trial court's ruling (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58 ["The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment."]).

DISPOSITION

The amended judgment is affirmed. Plaintiff is entitled to his costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
ASHMANN-GERST